

156078

*Sector 8 - Dead Creek
Access - Internal memo*

Monsanto

(From: Name, Location, Phone) MAX W. MCCOMBS WGR EXT. 6390

Date: August 22, 1990

cc: S. Krehma
W. Smull

Subj: Access Agreement

Ref:

To: Cornell Boggs

CONFIDENTIAL 92-CV-204-WDS

Attached is Cerro's version of the Access Agreement for Sector 8 Dead Creek. Please review and let me know if exceptable, and if not what changes need to be made.

Max W. McCombs /sdg

Max W. McCombs

/sdg
Attach.

CER 008324



CERRO COPPER PRODUCTS CO.

P.O. Box 66800
St. Louis, MO 63166-6800
618/337-6000

CONFIDENTIAL 92-CV 204

August 17, 1990

Monsanto Chemical Company
500 Monsanto Avenue
Sauget, IL 62206-1198

Attention: Mr. Max W. McCombs, General Superintendent
Government and Environmental Affairs

RE: Access Agreement

Dear Max:

I apologize for the delay in responding to your request for the consideration of an Access Agreement to allow Monsanto and its contractors access to property owned by Cerro adjoining Dead Creek south of Queeny Avenue.

We have now completed our review of the proposed agreement and find that it needs to be more explicit in several areas.

Accordingly, I am enclosing a revised draft which meets Cerro's concerns, and trust that you will agree with its provisions.

Let me hear from you at your convenience.

Sincerely,

CERRO COPPER PRODUCTS CO.

Paul Tandler
Vice President

PT/ge

Enclosure

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A member of The Mallory Group of companies

ACCESS AGREEMENT

THIS AGREEMENT is made as of this ____ day of _____, 1990, by and between CERRO COPPER PRODUCTS CO. (Cerro), as landowner in St. Clair County, Illinois, and MONSANTO CHEMICAL COMPANY, a unit of Monsanto Company, whose principal offices are located at 800 North Lindbergh Boulevard, St. Louis, Missouri 63107 (Monsanto).

WHEREAS, Monsanto has requested permission to enter upon the property owned by Cerro described in Attachment A, for the purpose of conducting certain site assessment activities, including investigations and sample collection activities required to determine environmental conditions in and around the Dead Creek area of Sauget, Illinois; and

WHEREAS, Cerro is willing to grant Monsanto a revocable license for such purpose;

NOW THEREFORE, in consideration of and conditioned upon the mutual covenants, promises and agreements stated herein, the parties agree as follows:

1. Cerro hereby grants to Monsanto and/or its authorized representatives, contractors and subcontractors retained directly or indirectly by Monsanto, a revocable license to enter upon the real property owned by Cerro located along Queeny Avenue, described in the attached Exhibit A (the "Property") for the purpose of performing environmental investigations and sample collection activities.

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2. Monsanto warrants on behalf of itself and its authorized representatives, contractors and subcontractors, that all investigations and sampling activities will be conducted at reasonable times and in a reasonable manner only to further the purposes of this Agreement; that these activities will not present environmental or health danger and will not interfere with the activities of others or their lawful rights to occupancy and use of the property; that the activities will be performed in a manner consistent with prevailing professional standards; and that each field activity to be conducted shall be coordinated by professionals with experience relative to the particular activity being conducted at the Property each day.

3. Monsanto shall provide notice to Cerro and a copy of the work plan for its investigative and sampling collection activities at least three business days prior to going onto the Property. Notice shall be provided to the undersigned. Nothing in this Agreement shall authorize the installation of any well or the drilling of any cores unless separately so authorized by Cerro in writing after submission by Monsanto of proposed plans and specifications in connection therewith.

4. Monsanto shall provide Cerro with copies of all data, test results and photographs obtained as a result of its investigative and sampling collection activities on

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the Property within a reasonable time after they become available.

5. Monsanto warrants on behalf of itself and its authorized representatives, contractors and subcontractors, that all investigative and sampling collection activities on the property will be conducted in accordance with all applicable environmental safety and health laws and will be completed within 12 months of the date of this Agreement.

6. Monsanto agrees that upon completion of the investigative and sample collection activities to be performed, or upon the revocation of this license by Cerro, whichever first occurs, all material, waste products, and miscellaneous debris generated during the work, and all equipment shall be immediately removed from the Property and the Property shall be restored as nearly as possible to its original state and condition.

7. Monsanto hereby agrees to defend, indemnify and hold Cerro harmless from any losses, expenses, damages, demands, costs, claims, or injury (including attorney's fees and experts' fees) resulting directly or indirectly from the investigative or sampling collection activities performed by Monsanto or its authorized representatives, contractors and subcontractors on the Property.

8. Nothing herein shall be construed as an admission by any party of any fact or legal liability in

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connection with any claims or demands of the United States, the State of Illinois, and agencies or instrumentalities thereof, or any other persons, with respect to conditions of the Property.

9. Nothing herein shall be construed as a compromise, waiver or release of any claims, demands, actions or liability which any of the parties may have as between and among each other which arises out of, is occasioned by or results from any conditions, acts, omissions or circumstances existing on or before the date of this Agreement or which arises separately and independently of the terms of this Agreement. Cerro makes no representation or warranty and Monsanto acknowledges that it has not relied upon any representations or warranties of Cerro with respect to any conditions of the Property.

10. No agent, employee or other representative of either party is empowered to alter or amend any of the terms of this Agreement, unless such alteration and/or amendment is in writing and has been signed by an authorized representative of both parties. This provision cannot be orally waived. Anything to the contrary notwithstanding, the terms and conditions of this Agreement and the rights and obligations created as a result thereof shall be binding upon and/or inure to the benefit of the parties hereto, their officers, directors, agents, employees, their respective successors, assigns, designees, and

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contractors. This Agreement shall not inure to the benefit of any other third party not a party to this Agreement.

11. This license shall be revocable at any time by Cerro upon written notice to Monsanto which shall be effective upon receipt. Except for paragraphs 1 and 3 hereof, this Agreement shall survive such revocation.

12. This Agreement shall be effective upon return of a fully-executed copy of this Agreement to Cerro.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.

CERRO COPPER PRODUCTS CO.

By: _____
Paul Tandler
Vice President

MONSANTO CHEMICAL COMPANY,
A unit of Monsanto Company

By: _____
Title: Plant Manager

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